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No. 01-419

In The

Supreme Court of the United States

CITY OF COLUMBUS, OHIO, et al.,

Petitioners,

vs.

OURS GARAGE and WRECKER SERVICE, INC., et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF *AMICI CURIAE*, THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION, THE CITY OF GARLAND, TEXAS, THE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA, AND THE CITY OF SAN JOSE, CALIFORNIA, IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*

The International Municipal Lawyers Association ("IMLA") and the City of Garland, Texas, as *amici curiae*, file this brief in support of the Petitioners, the City of Columbus, Ohio, *et al.*[1]

IMLA is a nonprofit, nonpartisan professional organization consisting of more than 1,400 members. The membership is comprised of local government entities, including cities and counties, and subdivisions thereof, as represented by their chief legal officers; state municipal leagues; and individual attorneys who represent municipalities, counties, and other local government entities. IMLA, previously known as the National Institute of Municipal Law Officers, has provided services and educational programs to local governments and their attorneys since 1935. IMLA is the oldest and largest association of attorneys representing United States municipalities, counties, and special districts.

Since its establishment, IMLA has advocated for local governments, and the attorneys who represent them, through its Legal Advocacy Program. Specifically, the Legal Advocacy Program of IMLA serves the membership by advocating the nationwide interests, positions,

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[1] Pursuant to this Court's Rule 37.2(a), letters of consent from all parties regarding the filing of this brief have been filed with the Clerk. Pursuant to this Court's Rule 37.6, *amici curiae* represent that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than the *amici curiae*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

and views of local governments on legal issues. IMLA has appeared as an *amicus curiae* on behalf of its members before the United States Supreme Court, in the United States Courts of Appeals, and in state supreme and appellate courts.

The City of Garland, Texas is a home-rule municipality located in Dallas County, Texas. Any ruling on the reach of the preemptive effects of 49 U.S.C. §14501(c) will necessarily impact the City not only in the realm of tow truck regulation but in other as yet unanticipated areas that cities have traditionally regulated.

The City and County of San Francisco, California is a charter city located in California. The City and County of San Francisco sued a tow operator for unfair business practices based upon his violations of the California Vehicle Code and a local towing ordinance. *People v. Servantes*, 86 Cal. App. 4th 1081 (Cal. Ct. App. 2001), *review denied*, (Cal., May 16, 2001), *petition for cert. filed*, 70 U.S.L.W. 3162 (U.S. Aug. 14, 2001) (No. 01-336). The petition for writ of certiorari is currently pending in this Court. A ruling on the scope of preemption provided by 49 U.S.C. §14501(c) will directly affect the citizens of San Francisco.

The City of San Jose, California is a charter city located in Santa Clara County, California and is subject to the jurisdiction of the Ninth Circuit. The City of San Jose currently has a case challenging the City's tow ordinance pending before the Ninth Circuit. Any ruling on the preemptive effects of 49 U.S.C. §14501(c) will directly impact tow truck regulation in the City of San Jose.

Amici curiae's specific interest in this case lies in the impact that this Court's ruling will have on local governments throughout the United States. Of all the various sorts of transportation that may fall within the ambit of interstate commerce, none is so essentially local in nature as towing. Most drivers who are faced with a disabled vehicle neither want or need a long-distance tow across state lines. As a practical matter, drivers universally have their vehicles taken someplace near the scene of the mishap or breakdown that necessitated the tow. Accordingly, the tow truck business has traditionally and for many years been regulated solely on a local basis. If the ruling in the Court of Appeals in this case is allowed to stand, that role will be eliminated. Indeed, the construction given by the Sixth Circuit as to the breadth of the preemption provided by 49 U.S.C. §14501(c) will put all tow truck operations outside the reach of local law enforcement. Because nothing in 49 U.S.C. §14501(c) evidences the intent of Congress to create such an expansive preemption, *amici curiae* offer this brief in support of the Petitioners.

SUMMARY OF THE ARGUMENT

Congress clearly did not intend to immunize tow truck operators from the reach of local law enforcement when it deregulated the interstate trucking business. Through a formalistic interpretation of 49 U.S.C. §14501(c), several circuits have determined that Congress did just that by holding that the exceptions to preemption contained in 49 U.S.C. §14501(c)(2) do not apply to local governments. Other courts have found that such an

implausible result was not the intent of Congress because by use of the term "regulatory authority," Congress meant to allow for local safety regulations through the delegation of a state's authority to its local government entities. None of those cases, however, have answered a more basic question: Whether Congress ever meant to create a wholesale preemption of either state or local regulation of the towing industry when Congress specifically limited the preemptive scope of 49 U.S.C. §14501(c) to the prices charged, the routes taken, and the services offered by interstate motor carriers. This Court should grant Petitioner's application for writ of certiorari, resolve the conflict among the circuits, and find that tow truck operators have not been bestowed a Congressional "King's X" over front-line regulation of the uniquely local towing business.

ARGUMENT

By employing certain canons of statutory construction and by entertaining various presumptions as to legislative intent, the Fifth, Sixth, Ninth and Eleventh Circuits have determined that local governments may not continue in their long-standing role as regulators of local tow truck operations. That conclusion is wrong for at least two reasons.

First, as ably argued by the Petitioners, the analysis used by those courts fails to recognize the role of municipal and county governments as local repositories of the states' regulatory authority. There are approximately 16,612 local police and sheriff agencies in the United

States which employ nearly 622,041 sworn law enforcement officers. U.S. Dept. of Justice, Bureau of Justice Statistics, Local Police Departments 1999 at 1 (May, 2001). Those municipal and county employees represent almost 92% of the "safety regulatory authority"of the states. When it comes to tow trucks, it is those officers who carry the bulk of the responsibility for responding to traffic accidents and clearing the streets of disabled vehicles. If the term "safety regulatory authority" does not contemplate the delegation of a state's police power to its political subdivisions then Congress has not just "deregulated" the tow truck business – it has handed tow truck operators a license to ignore the preponderant law enforcement authority existing within the states. Taken to its logical extension, the reasoning of the decisions such as that of the Sixth Circuit in this case means that not only are cities and counties unable to keep, through local regulations, tow truck operators from racing each other to the scene of a disabled vehicle in hopes of obtaining unsolicited business, they are also preempted from enforcing locally-established speed limits and- other traffic regulations against those operators. The term "regulatory authority" cannot both preclude local regulation of towing practices and yet still allow for the local imposition of other safety laws.

Second, the analysis of legislative intent made by the Fifth, Sixth, Ninth and Eleventh Circuits fails to recognize that Congress did not preempt state and local regulation of every conceivable aspect of the business engaged in by interstate motor carriers, including tow trucks.

In relevant part, Section 14501(c) provides:

> " . . . a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision . . . related to a price, route, or service of any motor carrier . . . with respect to transportation."

49 U.S.C. §14501(c)(1). Thus, Congress made state and local regulation of only three areas out of bounds: price, routes and service and then only when done "with respect to transportation". Therefore, unless a state or local regulation relates to a "price, route, or service" of a "motor carrier" "with respect to transportation" the law will not be preempted.

Certainly, an ordinance that establishes the maximum price that a tow truck operator may charge for a consensual tow is preempted by Section 14501(c). As applied to towing operations, the concept of "routes" has little meaning. Tow trucks do not have "routes" in the sense clearly intended by Congress in that tow trucks go to the site of the disabled vehicle, wherever that may be. The real question, then, is whether ordinances like those examined by the various circuits affect the "services" of a tow truck operator.

Consider a common-place occurrence: A motorist is involved in a minor, rush-hour accident that disables his vehicle but leaves him fully able to consent to a tow. The accident is tying up traffic. In a market that has been "deregulated" to the extent envisioned by the Fifth, Sixth, Ninth and Eleventh Circuits, the stranded motorist is free to choose his own tow truck operator regardless whether that operator is located hours from the scene of the

accident and whether that company is even equipped to handle the sort of towing involved. Arguably, any ordinance that prohibits a towing company from responding to the accident unless the company could get there within a reasonable time and show up with the proper equipment (or that requires the motorist to use a company meeting those criteria) affects "service". The question this Court should answer is whether the notion of "service" as used by Congress in Section 14501 is that broad. The Columbus ordinance and other regulatory schemes examined by the various circuits attempt to address the practical problems involved with towing disabled vehicles (as well as preventing the acknowledged practice of "chasing"). They are not intended as economic regulations and it was *economic* regulations that Congress sought to preempt when it adopted 49 U.S.C. §14501(c). *See* H.R. CONF. REP. NO. 103-677, at 87 (1994) (State *economic* regulation of motor carrier operations causes significant inefficiencies. . . . ") (emphasis added). They do not attempt to regulate the market for towing services, but only serve the narrow interests of the public in having traffic obstructions and safety hazards quickly and efficiently removed from public streets.

Congress specifically limited the reach of the preemption created by 49 U.S.C. §14501(c) to matters affecting price, route, or service. Because Congress has expressly stated the preemptive reach of Section 14501(c), matters beyond that reach are not implicitly preempted as well. *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 at 517 (1992). True, by use of the term "relate to" in Section 14501(c) Congress has conveyed a broad preemptive purpose, *see, Morales v. Trans World Airlines, Inc.*, 504 U.S. 374

at 383 (1992) ("The ordinary meaning of [the] words [relating to] is a broad one. . . . ") That, however, does not answer the question of just how extensive Congress intended its three controlling subjects – price, route, and service – to be when a state or local law ostensibly "relates to" one of those subjects. As stated previously, given its most expansive reading, Section 14501(c) would preempt the enactment or enforcement of a local speed limit ordinance because that ordinance "relates to" a "service". This Court should determine whether that sort of preemption is what Congress clearly intended.[2]

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[2] This Court has wrestled with a virtually identical issue in the context of airline deregulation involving a preemption statute that follows Section 14501(c) almost word-for-word. *See Northwest Airlines, Inc. v. Duncan*, 531 U.S. 1058 (2000) (mem.) (O'Conner, J., dissenting from denial of petition for writ of certiorari: "The petition for writ of certiorari in this case presents an important issue that has divided the Courts of Appeals: the meaning of the term 'service' in the portion of the Airline Deregulation Act of 1978 (ADA) that pre-empts any state law 'related to a price, route, or service of an air carrier' "). A determination of the issue in this case could give guidance in that context as well.

CONCLUSION

Amici curiae respectfully request this Court to grant the petition for writ of certiorari in order to address the important questions presented in this case.

Respectfully submitted,

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